IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/01/2003

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

S.A.No.1675 of 1992

1. A.Thangamani
2. A.Thamilarasan
3. A.Radhakrishnan
4. A.Kumaresan .. Appellants

-Vs-

1. Panchayat Union,
Vadipatti, through its
Commissioner, Vadipatti
Nilakottai Taluk.

2. Panchayat Board,
Mannadimangalam, through
its Special Officer,
Mannadimangalam,
Nilakottai Taluk.

3. State of Tamil Nadu,
rep. by District Collector
Madurai Collectorate
Buildings, Madurai.

4. M.Duraipandi .. Respondents

This second appeal has been preferred under S.100 of The Code of Civil Procedure against the judgment and decree of the Subordinate Judge, Madurai made in A.S.No.114 of 1988 and dated 27.3.1992 reversing the judgment and decree of the District Munsif, Tirumangalam made in O.S.No.303 of 1984 and dated 2.12.1987.

!For Appellants : Mr.R.Subramanian

^For Respondents : Mr.M.Liagat Ali for RR1 & 2
No appearance for RR3 and 4

:JUDGMENT

A judgment of the learned Subordinate Judge, Madurai reversing the judgment of the learned District Munsif, Tirumangalam in a suit for

declaration that the plaintiff is the licensee of the coconut trees in the suit property and consequential permanent injunction that his possession should not be interfered with is under challenge.

2. The short facts which led to the filing of the suit can be stated as follows:

Originally, the plaintiff Arujunan Servai whose legal representatives are the present appellants, obtained a licence dated 21.11.1957 from the Tahsildar, Nilakottai for raising coconut trees in the Government poramboke land in R.S.No.111/13 in Natham Oorani Bund, Mannadimangalam Village, Nilakottai Taluk. The said licence was issued under the Board Standing Order S.19-B (para 3). After the licence was granted, the plaintiff raised 150 coconut trees in the Oorani Bund in Survey No.111/13. He was enjoying the same. The second defendant attempted to interfere with his possession, which constrained the plaintiff to file a suit in O.S.No.205 of 1973. The second defendant submitted to decree. Pursuant to the same, a decree was passed. Of the 150 trees raised by the plaintiff, 90 trees had begun to yield. By the proceedings in Roc.17660/83-A5, the Tahsildar, Nilakottai granted patta for 90 trees and taxed at Rs.4/- per tree from Fasli 1388 to 1391 and at Rs.60/- per tree from Fasli 1392, totalling Rs.2,160/-. The plaintiff remitted the amounts towards the same then and there. As a licencee, the plaintiff was entitled to pluck the usufructs thereon. His right has been recognised by the Government, 4th defendant, and tree patta under 2-C was granted in his favour. While so, the first defendant Panchayat Union, Vadipatti, at the instance of the second defendant published a notice that the coconut trees which were in the possession of the plaintiff was proposed to be sold in public auction on 9.2.1984. Further, the plaintiff came to know that the first defendant had created a record as if the usufructs were auctioned on 9.2.1984. The plaintiff thereafter filed an appeal before the District Collector, but the same was not heard. The third defendant desired to take the usufructs on lease from the plaintiff. The third defendant had no right to take the usufructs in auction. The Tahsildar at the instance of the first defendant and the fourth defendant, Government was attempting to cancel the 2-C patta without any right. The plaintiff was to pluck the coconuts. Otherwise, loss would be caused. Under such circumstances, after issuing the proper notice, he has brought forth the suit for the above said reliefs.

3. The suit was vehemently contested by the defendants 2 and 4 on different grounds. The second defendant would state that the land in S.No.111/13 has been classified as Natham; that it is a Oorani and is vested with Manadimangalam Panchayat; that Manadimangalam Panchayat alone has got the control to maintain the Oorani; that the Panchayat has transplanted 104 coconut trees; that the Tahsildar, Nilakottai did not obtain the consent of the Panchayat for the alleged grant of 2C patta dated 19.9.1983; that in the Panchayat resolution dated 30.3.19 82, it was resolved that no 2C patta should be granted to the plaintiff, which was communicated to the Tahsildar; that the Tahsildar on receipt of the resolution closed the file without issuing any 2C patta to the plaintiff; that the records available in the Panchayat revealed that all the coconut trees in the said survey number were transplanted, grown and maintained by the Panchayat itself; that on 20.1.1984, auction notice was given to the public fixing the date of auction on 9.2.1984; that the third defendant came as the successful bidder for Rs.5550/- for three years; that the plaintiff filed an appeal before the District Collector, Madurai, and the

entire proceedings were stayed; that as per the order of the District Collector, the Village Administrative Officer is in custody of the coconut trees; that the reference to the suit in O.S.No.205/73 is absolutely fraudulent; that the plaintiff is not in possession and enjoyment of the coconut trees; that he has no rights to pluck the coconut fruits; that the brother of the plaintiff Samayanan has wantonly acted against the interest of the Panchayat, and action is being taken against him; that the plaintiff is not entitled to any relief, and hence, the suit may be dismissed.

4. The fourth defendant would contend that since it was brought to the notice of the fourth defendant that the 2C patta already granted to the plaintiff by the Tahsildar was against the provisions of law, the same was subsequently cancelled; that the order cancelling the 2C patta is legal; that the plaintiff has no right to question the said order; and therefore, the suit has to be dismissed.

5. The plaintiff filed a reply statement averring that the Natham is not vested with the Panchayat; that after the expiry of the period of 10 years, the plaintiff got possession of the property; that the panchayat cannot auction the same; that the auction dated 9.2.84 is illegal; that it is only because of the threat, the plaintiff had to file the suit; that there is no fraud perpetrated by the plaintiff, and hence, the suit has to be decreed in his favour.

6. The trial Court framed the necessary issues, tried the suit and granted the reliefs as asked for. Aggrieved defendants took it on appeal, wherein the learned Subordinate Judge reversed the judgment of the trial Court and dismissed the suit. Thus, the second appeal has arisen at the instance of the plaintiff.

7. At the time of admission, the following substantial questions of law were formulated for consideration:

1) Whether in law, the Appellate Court was right in holding that the decree passed in O.S.205/73 is not binding on the respondents?

2) Whether the Appellate Court was right in law in holding that the Tahsildar had power to cancel the 2-C patta without revoking the licence granted under S.O. 19-B of the Boarding Standing Orders?

3) Whether in law the Appellate Court has not erred in holding that the Tahsildar had no authority to issue S.O. 19-B licence overlooking the provisions of S.O. 19-B, which contemplate issuance of licence by the Tahsildar?

4) Whether in law the Appellate Court has not failed to see that all existing private rights by way of 2-C patta in respect of trees standing on public lands whether vested or entrusted, will continue to remain wholly unaffected by these orders, vide Private Rights by 2-C Patta Manual on Panchayat Administration, Part I Panchayats, (Revised Edition) and that the 2-C patta having been granted prior to 30.5.1961 it cannot be questioned?

8. The learned Counsel appearing for the appellants while assailing the judgment of the first appellate forum, interalia would submit that the suit property is actually situate in Natham Poramboke, and hence, it would not vest with the Panchayat; that the respondents did not produce any records, in particular the vesting register, showing that the suit property actually vested with the panchayat; that merely because the revenue records described the property as a tank poramboke, it could not be deemed to have vested in the Panchayat Board; that before issuing the licence under the Standing Order

No.19-B, the revenue authorities need not consult with the Panchayat, since the law does not require so; that moreover, no such thing ever existed in 1957 or prior to that; that it is pertinent to note that the licence in question was issued in favour of the licencee in the year 1957; that there is nothing to hold that the earlier Panchayat Board President ever colluded with the appellants' father by submitting to decree, and thus, the decree passed in O.S.No.205/73 would be binding on the Panchayat; that 2-C patta has been properly issued in favour of the licencee, and under such circumstances, 2-C patta cannot be cancelled, and hence, the lower appellate Court cannot have basis for setting aside the judgment of the trial Ckourt; that 2-C patta granted in favour of the licencee was cancelled subsequentlly; that it remains to be stated that without revoking 19-B licence under Ex.A1, the Tahsildar had no authority to cancel 2-C patta issued to the appellants' father; that the provisions of the Panchayat Act would not in any way affect or restrict the enjoyment and possession of the coconut trees, when the licence was granted under 19-B of the Board's Standing Order; that it is pertinent to point out that 2-C patta was cancelled only subsequent to the initiation of the proceedings before the lower forum, and under such circumstances, the trial Court only on proper appreciation of the grant of licence under Ex.A1 and pursuant patta under 2-C has granted the reliefs in favour of the plaintiff, and hence, the judgment of the trial Court has got to be restored, and the judgment of the first appellate Court has got to be set aside.

9. Countering to the above contentions of the appellants' side, the learned Counsel appearing for the respondents 1 and 2 would submit that the property is one situate in Tank Bund, which actually vested in the Panchayat in the year 1950 itself, and under such circumstances, the Tahsildar had no authority or competency to issue a licence as found under Ex.A1; that the decree in O.S.No.205/73 would not be binding on the respondents, since it was a collusive one; that the appellants' father, who was a licencee under Ex.A1 filed the said suit against the Panchayat President who happened to be his brother and got a decree; that it is pertinent to note that the defendant therein submitted to decree; that it is true that though 2-C patta was issued, when it was brought to the notice of the Collector that all these things what had happened were contrary to law, were subsequently cancelled under Ex.B43; that the said cancellation of 2-C patta has not yet been challenged anywhere in any forum known to law; that apart from that, P.W.1 has well admitted in the cross examination that from 1986 onwards, the usufructs have been taken by the Government, sold and deposited, which would clearly be indicative of the fact that the plaintiffs are not in possession and enjoyment, and hence, the issue of licence under Ex.A1 was one without authority, which was subsequently followed by 2-C patta; that the 2-C patta has been cancelled; that the said cancellation has become final; and that though the licence was granted under Ex.A1, it was done by the authority who is not holding power. Added further the learned Counsel that the Tahsildar has issued the licence under Ex.A1 in respect of the property, which originally vested in the Panchayat in the year 1970 itself; that not even objections were called for from the panchayat, and hence, the lower appellate court after elaborate discussion, has taken a correct view in setting aside the judgment of the trial Court, and therefore, the judgment of the first appellate Court has got to be sustained.

10. After careful consideration of the rival submissions and the scrutiny of the available materials, the Court has to necessarily agree with

the defence put forth by the Panchayat.

11. Admittedly, one Arujunan Servai, the father of the appellants herein, was issued a licence on 21.11.1957, as evidenced by Ex.A1, by the Tahsildar, Nilakottai for raising coconut trees in R.S.No.111/13. It is pertinent to point out that when the plaintiff Arjunan Servai describes the property, wherein he has been given licence, has stated that the suit properties were coconut trees in Government Poramboke Land in R.S.No.111/13 in Natham Oorani Bund, Mannadimangalam Village, Nilakottai Taluk. It is not in dispute that the said Arujunan Servai was granted with 19-B licence in the year 1957 to plant 150 coconut trees in the said survey field. He was allowed by the local Panchayat to enjoy the usufructs for 10 years from 1960 to 1970, and thereafter, on recovering possession of the land and the trees through a Civil Court decree, he had let the trees on lease to private individuals till the year 1982. It is pertinent to point out that a suit was filed by the plaintiff in O.S.No.205/73. It is not in dispute that the then Panchayat Board President was the brother of the plaintiff, who has also submitted to decree. According to the appellants' side, a 2-C patta has also been issued by the Tahsildar, Nilakottai. But, it is contended by the respondents' side that this 2-C patta was pursuant to the grant of a licence in respect of a property, which originally vested with the panchayat, and hence, 2-C patta should not have been granted. As could be well seen from Ex.B43, the 2-C patta granted in favour of the said Arujunan Servai was cancelled even as early as 29.6.1984, and the same has not yet been challenged either by the said Arujunan Servai or by his legal representatives, who are the present appellants. The said cancellation of 2-C patta was pursuant to a police complaint given under Ex.B41. The plaintiff as P.W.1 has well admitted that from 29.6.1984, the concerned Tahsildar has been plucking the usufructs, selling the same and depositing the sale proceeds. The lower appellate Court has pointed out that the instant suit was filed subsequently, and thus, even on the date of filing of the suit and subsequently also, the plaintiff was not actually in enjoyment of the coconut trees in question. Thus, it would be clear that pursuant to the cancellation of the 2-C patta on 29.6.1984, the plaintiff has not been in enjoyment of the same.

12. Apart from that, even the plaintiff has well admitted in the plaint that the suit properties viz. the trees are situate in Tank Bund. As per the Panchayat Act, 1950, the Ooranies and Tanks and Tank Bunds actually vested in the panchayat. In view of the same, the contention put forth by the appellants' side that the vesting register was not produced by the respondents to prove that the trees in question actually vested in the panchayat cannot be countenanced. In the instant case, it would be quite evident that even after the vesting of these properties in the panchayat in the year 1950, the Tahsildar without any consultation with the panchayat or without calling for any objection, has issued Ex.A1 licence. The Court is of the considered view that the judgment of this Court reported in 1971 (1) M.L.J. 341 (THE PRESIDENT, RISHIYUR PANCHAYAT, MANARGUDI AND OTHERS) squarely applies to the present facts of the case. As found in that case, no notice has been given to the Panchayat calling for its objections. It has also been held in the said decision that even a statement given by the Panchayat President cannot be equated to a sstatement made by the panchayat itself.

13. The last contention put forth by the appellants' side that the

licence issuing authority was vested with powers to cancel the licence also, and so long as it is not cancelled, it will hold good, and the panchayat can take necessary action for cancellation of the licence issued in favour of Arujunan Servai, even assuming that it was issued without competence by the Tahsildar cannot be countenanced. Taking into consideration that the property, the subject matter of the suit, is situate in Tank Bund, which vested in the panchayat in 1950; that the Tahsildar without any consultation or without calling for objections from the panchayat has issued the licence under 19-B of the Board's Standing Order; that the Tahsildar is not competent to issue the same; that the 2-C patta that was granted pursuant to the licence, has also been cancelled; that the cancellation of the 2-C patta has not been challenged anywhere till this time; and that there is candid admission by the plaintiff as P.W.1 that from the time of cancellation of 2-C patta, the usufructs is not under his enjoyment, but is being plucked, sold and proceeds deposited by the concerned Tahsildar, it would be indicative of the fact that the plaintiff has not been in possession of the property. In the circumstances, no question of grant of reliefs to the appellants would arise. The lower appellate Court was perfectly correct in rejecting the request of the appellants. There is nothing to interfere in the conclusion arrived at by the first appellate court, and the same is sustained.
14. In the result, this second appeal is dismissed. The judgment and decree of the first appellate Court are confirmed. Parties shall bear their own costs.

Index: Yes
Internet: Yes

To:
1. The Subordinate Judge,
Madurai.

2. The District Munsif,
Tirumangalam.

nsv/

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